
COUNCIL OF THE CITY OF SAN JOSE

RESOLUTION NO. [Resolution Number]

A SIXTEENTH SUPPLEMENTAL RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING THE FORMS OF ONE OR MORE SUPPLEMENTAL TRUST AGREEMENTS, ONE OR MORE PRELIMINARY OFFICIAL STATEMENTS, ONE OR MORE FINAL OFFICIAL STATEMENTS, ONE OR MORE BOND PURCHASE AGREEMENTS AND ONE OR MORE CONTINUING DISCLOSURE CERTIFICATES; PROVIDING FOR THE ISSUANCE OF ONE OR MORE SERIES OF CITY OF SAN JOSE AIRPORT REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$300,000,000; PRESCRIBING THE TERMS, CONDITIONS AND FORM OF SAID SERIES OF BONDS; AND AUTHORIZING AND APPROVING OTHER RELATED ACTIONS

Adopted: June 21, 2011

RESOLUTION NO.

A SIXTEENTH SUPPLEMENTAL RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING THE FORMS OF ONE OR MORE SUPPLEMENTAL TRUST AGREEMENTS, ONE OR MORE PRELIMINARY OFFICIAL STATEMENTS, ONE OR MORE FINAL OFFICIAL STATEMENTS, ONE OR MORE BOND PURCHASE AGREEMENTS AND ONE OR MORE CONTINUING DISCLOSURE CERTIFICATES; PROVIDING FOR THE ISSUANCE OF ONE OR MORE SERIES OF CITY OF SAN JOSE AIRPORT REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$300,000,000; PRESCRIBING THE TERMS, CONDITIONS AND FORM OF SAID SERIES OF BONDS; AND AUTHORIZING AND APPROVING OTHER RELATED ACTIONS

WHEREAS, the Council (the "Council") of the City of San José (the "City"), a municipal corporation and political subdivision duly organized and validly existing under the Constitution of the State of California and the Charter of the City, duly adopted Resolution No. 70532 on June 26, 2001, approving the Master Trust Agreement dated as of July 1, 2001 (the "Master Agreement") between the City and The Bank of New York Mellon Trust Company, N.A., as successor to BNY Western Trust Company, as trustee (the "Trustee"), providing for the issuance of City of San José Airport Revenue Bonds, and amending and restating Resolution No. 57794 and the supplemental resolutions thereto (collectively, the "Prior Resolution"); and

WHEREAS, the City has previously issued under the Prior Resolution and the Master Agreement its Airport Revenue Bonds, Series of 1992, its Airport Revenue Bonds, Series of 1993, its Airport Revenue Bonds, Series of 1994, its Airport Revenue Refunding Bonds, Series 1998A, its Airport Revenue Bonds, Series 2001A, its Airport Revenue Refunding Bonds, Series 2002A and 2002B, its Airport Revenue Bonds, Series 2004A, 2004B, 2004C and 2004D, and its Airport Revenue Bonds, Series 2007A and 2007B; and

WHEREAS, the City has heretofore issued its currently outstanding San José International Airport Subordinated Commercial Paper Notes and may issue additional such notes (the "Notes"); and

WHEREAS, capitalized terms not otherwise defined in this Resolution shall have the meanings specified in the Master Agreement; and

WHEREAS, the Master Agreement provides that the City may issue Additional Bonds from time to time as the issuance thereof is authorized by the City by a

Supplemental Trust Agreement, subject to the conditions and limitations contained in the Law and in Article III of the Master Agreement; and

WHEREAS, the City is not in default under the Master Agreement or any Supplemental Trust Agreement; and

WHEREAS, it is now desirable, necessary and in the best interests of the City to authorize the issuance of one or more series of Additional Bonds (as such term is defined in the Master Agreement) in a total aggregate principal amount of not to exceed \$300,000,000, to be designated, subject to additional series and subseries designations, as the "City of San José Airport Revenue Bonds, Series 2011A" (collectively, the "2011A Bonds"), for the purpose of refinancing a portion of the costs of designing and constructing certain improvements to the Norman Y. Mineta San José International Airport (the "Airport"), funding any required cash deposit to the Bond Reserve Fund (as such term is defined in the Master Agreement), paying costs of issuance of any series of the 2011A Bonds, including premiums for a bond insurance policy or policies, if any, refunding all or a portion of the outstanding Series 1998A Bonds and Series 2001A Bonds (the "Refunded Bonds"), and refunding all or a portion of the outstanding Notes; and

WHEREAS, this Council has determined that one or more series of 2011A Bonds, in an aggregate principal amount of not to exceed \$300,000,000, should be issued pursuant to the Master Agreement and one or more Supplemental Trust Agreements in the form posted to the agenda webpage for this meeting and made a part hereof (the "Supplemental Agreement"); and

WHEREAS, there has been prepared a form of Preliminary Official Statement relating to the 2011A Bonds (the "Preliminary Official Statement"), a form of Continuing Disclosure Certificate (the "Continuing Disclosure Certificate"), and a form of Bond Purchase Agreement (the "Bond Purchase Agreement"), one or more of which are to be entered into by the City and the purchasers of the 2011A Bonds; and

WHEREAS, it may result in more favorable pricing for the payment of principal of and interest on all or a portion of the 2011A Bonds to be supported by one or more financial guaranty insurance policies ("Bond Insurance") issued by a provider of such policies ("Bond Insurer"); and

WHEREAS, the conditions and limitations contained in the Law and in Article III of the Master Agreement have been satisfied or will be satisfied at the time of the issuance of the 2011A Bonds; and

WHEREAS, the interest on the 2011A Bonds and certain series of the Notes may qualify for exclusion from gross income for federal income tax purposes (the "Tax

Exempt Obligations”) under Section 103(a) of the Internal Revenue Code of 1986 (the “Code”) only if certain requirements are met by the City, including that such Tax Exempt Obligations are approved in accordance with Section 147(f) of the Code; and

WHEREAS, this Council is the elected legislative body of the City and is the applicable elected representative required to approve the Tax Exempt Obligations for purposes of Section 147(f) of the Code; and

WHEREAS, a notice of public hearing with respect to the Tax Exempt Obligations to be issued by the City was published not less than fourteen (14) days prior to said public hearing, in a newspaper of general circulation available to the residents of the City; and

WHEREAS, a public hearing was held pursuant to such notice before this Council on June 21, 2011, and an opportunity was provided for interested persons to present arguments for and against the issuance of such Tax Exempt Obligations and the nature and location of the projects that will be financed or refinanced using the proceeds of the Tax Exempt Obligations (collectively, the “Airport Projects”) pursuant to a plan of financing; and

WHEREAS, pursuant to the plan of financing, the City intends to finance and refinance the projects, programs, facilities and improvements owned, operated and/or managed by the City comprising the Airport Projects, including without limitation the acquisition, construction, equipping, financing, reconstruction, development, and modification of airport terminal and ancillary facilities which are included in or are consistent with the Airport Master Plan for the Airport, including without limitation modifications and improvements to Terminal A, construction of Terminal B, construction of a rental car garage, the demolition of Terminal C and improvement and realignment of roadways and bridges; together with related costs and expenses, with all such components of the Airport Projects located at the Airport in the Cities of San José and Santa Clara, California; and

WHEREAS, some or all of the Tax-Exempt Obligations to be issued may constitute “private activity bonds” within the meaning of the Code, and in such case, the City intends that such obligations constitute qualified exempt facility bonds within the meaning of Sections 141 and 142 of the Code; and

WHEREAS, pursuant to the Treasury Regulations, the Council must adopt a bond resolution or take some other official action toward the issuance of the Tax-Exempt Obligations prior to the commencement of the construction, reconstruction or acquisition of the facilities in order for such facilities to constitute exempt facilities within the meaning of the Code;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. Recitals True and Correct. The Council finds and determines that the foregoing recitals are true and correct.

SECTION 2. Approval of Forms of Documents. The proposed Supplemental Agreement, Bond Purchase Agreement and Continuing Disclosure Certificate, in substantially the forms posted to the agenda webpage for this meeting, are hereby approved and adopted.

SECTION 3. Execution and Delivery of Documents. Upon the advice of the City Attorney, the Director of Finance or Assistant Director of Finance of the City is hereby authorized to execute and deliver one or more Supplemental Agreements, one or more Bond Purchase Agreements and one or more Continuing Disclosure Certificates, all in substantially the forms posted to the agenda webpage for this meeting, with such changes, corrections, revisions or additions thereto as are deemed necessary and desirable to accomplish the purposes hereof.

SECTION 4. Approval of Form of 2011A Bonds Preliminary Official Statement. The proposed form of the 2011A Bonds Preliminary Official Statement, in substantially the form posted to the agenda webpage for this meeting is hereby approved. The Director of Finance or Assistant Director of Finance and the Director of Aviation are each hereby authorized to deliver one or more 2011A Bonds Preliminary Official Statements in substantially said form, with such changes, modifications and additions thereto as the Director of Finance or Assistant Director of Finance and the Director of Aviation may approve upon consultation with the City Attorney, such approval to be evidenced conclusively by the delivery by the Director of Finance or Assistant Director of Finance and the Director of Aviation of said 2011A Bonds Preliminary Official Statement as so added to or changed. The Director of Finance or Assistant Director of Finance and the Director of Aviation are each hereby further authorized to deliver or cause to be delivered one or more final 2011A Bonds Official Statements, in substantially the form of said 2011A Bonds Preliminary Official Statement, with such changes and additions thereto as the Director of Finance or Assistant Director of Finance and the Director of Aviation may approve upon consultation with the City Attorney, such approval to be evidenced conclusively by the delivery by the Director of Finance or Assistant Director of Finance and the Director of Aviation of said final 2011A Bonds Official Statement as so added to or changed. The Director of Finance or Assistant Director of Finance and the Director of Aviation are each hereby authorized to certify that each 2011A Bonds Preliminary Official Statement is, as of its date, "deemed final" within the meaning of Rule 15c2-12 of the Securities and Exchange Commission.

SECTION 5. Issuance of 2011A Bonds. One or more series of 2011A Bonds to be issued under Article III of the Master Agreement and pursuant to one or more

Supplemental Agreements are hereby authorized in a total aggregate principal amount of not to exceed \$300,000,000, and such 2011A Bonds shall be designated as the "City of San José Airport Revenue Bonds, Series 2011A," subject to additional series and subseries designations. The terms and form of the 2011A Bonds shall be substantially as set forth in the appendices to each Supplemental Agreement, and the same are hereby incorporated by reference as if fully set forth herein. As provided in Section 3.03 of the Master Agreement, upon the execution of each Supplemental Agreement and the issuance and delivery of each series of 2011A Bonds, such appendices shall be attached to the Master Agreement and shall thereafter become a part of such document. The 2011A Bonds are hereby designated as Tax-Exempt Bonds (as such term is defined in the Master Agreement) and shall mature no later than 2034.

SECTION 6. Parameters of Issuance for the 2011A Bonds. All series of 2011A Bonds shall bear interest at fixed interest rates at a true interest cost not to exceed 8.5% per annum, and the total compensation to the purchaser of the 2011A Bonds shall not exceed 0.6% of the par value of the 2011A Bonds.

SECTION 7. Trustee. The Bank of New York Mellon Trust Company, N.A. is hereby approved as the trustee under each Supplemental Agreement, effective with the delivery of the Series 2011A Bonds.

SECTION 8. Bond Insurance. The Council hereby authorizes the Director of Finance or Assistant Director of Finance to determine which, if any, of the 2011A Bonds shall be supported by Bond Insurance (based on the cost of such Bond Insurance and the interest savings on the 2011A Bonds resulting from such Bond Insurance), purchase any such Bond Insurance from the Bond Insurer, and take all other actions the Director deems necessary to ensure the delivery of such Bond Insurance in connection with the issuance of the 2011A Bonds.

SECTION 9. Ratification and Approval of Actions. The City Manager, the Director of Finance, the Assistant Director of Finance, the Director of Aviation, the City Clerk, the City Attorney, and the designees of any of them, are hereby authorized to execute and deliver any and all certificates, agreements, representations and opinions, as may be acceptable to the City Attorney, including the letter of representations to the bond depository, insurance, reimbursement and financial guaranty agreements with municipal bond insurers, escrow agreements, signature certificates, no-litigation certificates, tax certificates, and other certificates proposed to be delivered in connection with the execution and delivery of each Supplemental Agreement, and the sale of each series of 2011A Bonds, including, without limitation, all certifications required to be provided pursuant to Article III of the Master Agreement, as are deemed to be necessary and desirable to accomplish the transactions contemplated herein.

Authorization granted to the Director of Finance or Assistant Director of Finance, the Director of Aviation or the City Manager in this Resolution includes their authorized

designees. All action previously taken by the City's officers, employees and agents in furtherance of the transactions contemplated herein, are hereby ratified and approved.

SECTION 10. Approval of Tax Exempt Bonds and Plan of Financing. It is the purpose and intent of the Council that this Resolution constitutes the approval of (a) the Tax-Exempt Obligations by the appropriate applicable elected representative for purposes of, and in accordance with, Section 147(f) of the Code, and (b) a plan of financing for the issuance of Tax-Exempt Obligations in an amount not expected to exceed \$320,000,000 in order to finance and refinance the Airport Projects.

SECTION 11. Section Headings and References. The headings or titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Sixteenth Supplemental Resolution.

SECTION 12. Repeal of Inconsistent Resolutions. Any resolution of the City, and any part of any resolution, inconsistent with this Resolution, the Master Agreement and each Supplemental Agreement, is hereby repealed to the extent of such inconsistency.

[Remainder of Page Intentionally Left Blank]

SECTION 13. Effective Date of Sixteenth Supplemental Resolution. This Sixteenth Supplemental Resolution shall take effect from and after its adoption.

ADOPTED this 21st day of June, 2011, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk

CITY CLERK'S CERTIFICATE

I, DENNIS D. HAWKINS, City Clerk of the City of San José, hereby certify as follows:

The attached is a full, true and correct copy of a resolution duly adopted at a regular meeting of the City Council of said City duly and regularly held at the San José City Hall, 200 East Santa Clara Street, San José, California, the regular meeting place thereof, on June 21, 2011, and entered in the minutes thereof, of which meeting all of the members of said City Council had due notice and at which a quorum thereof was present; and at said meeting said resolution was adopted by the vote specified on the final page of the resolution.

An agenda of said meeting was posted at least 72 hours before said meeting at 200 East Santa Clara Street, San José, California, a location freely accessible to members of the public, and a brief general description of said resolution appeared on said agenda.

I have carefully compared the same with the original minutes of said meeting on file and of record in my office. Said resolution has not been amended, modified or rescinded since the date of its adoption, and the same is now in full force and effect.

Dated: June 21, 2011.

City Clerk of the
City of San José,
California

(Seal)